IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL WRIT PETITION NO.669/2000

Brij Lal Bundel
Vs.
The State of Rajasthan & Anr.

Date of Order :: 10th October, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE AJAY RASTOGI
::

Shri Sunil Samdaria for the petitioner.
Shri A.K. Sharma for respondent No.2.

*****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

Reportable

This writ petition by a former member of the Rajasthan Higher Judicial Service (RHJS) has been filed for quashing the punishment of censure awarded

to the petitioner vide order No.Estt.(RJS)/06/98 dated 7.1.1998. The petitioner has sought number of other reliefs too including quashing of the resolution dated 6.1.1995 by which the Full court was made the Disciplinary Authority, direction to pay him full pay and allowances for the suspension period and release of annual grade increment becoming due during the suspension period, and grant of selection grade scale of RHJS from the date his juniors were allowed the scale.

Orders were passed after filing of the writ petition in terms of which petitioner’s suspension period from 4.12.1992 to 2.8.1993 was regularized vide order dated 28.2.2000, and the period was treated as spent on duty but only for the purpose of pension, and he was not allowed the pay and allowances except the subsistence allowance already drawn by him during the suspension period. The pay of the petitioner was also revised vide order dated 4.5.2000 in the scale of Rs.16400-450-20000 and his pay was fixed at Rs.17300/- as on 1.9.1996 as per the Rajasthan Civil Services (Revised Pay Scale) Rules, 1998. However he was

compulsorily retired from service vide order dated 9.11.2000.

When the petition was taken up for hearing Shri Sunil Samdaria appearing for the petitioner confined his grievance to non-payment of pay and non-release of annual grade increment during the suspension period. He submitted that having regard to the fact that a minor penalty of censure was imposed, the petitioner should have been paid full pay and allowances, and in any case there was no justification to withhold the annual grade increment during the suspension period. In support of the latter contention, counsel placed reliance on Kan Singh Vs. State of Rajasthan & Ors., 1989(1) RLR 111 and Smt.Shanti Devi Vs. State of Rajasthan & Ors., 1990(1) RLR 800.

The question as to whether the petitioner was entitled to release of annual grade increment during suspension period need not detain us. No doubt in Kan Singh Vs. State of Rajasthan (supra), a Division Bench of this Court took the view that the contract of

service continues even during suspension, and increment should be ordinarily allowed to be drawn unless it is withheld by a specific order; on appeal by the State, the Supreme Court in S.L.P. (C) no.9256/1989 set aside the judgment. The order of the Supreme Court is not reported in any journal but it has been quoted verbatim in Rajasthan State Electricity Board & Anr. Vs. Narayan Lal Meena, 1996 III LLJ (Supp.) 1152. The order is brief and may be quoted as under :-

> "Leave granted.
> Heard learned counsel on both sides. Having regard to the Rules governing the matter, the claim for enhancement of the subsistence allowance in the manner directed by the High Court in this case, is not sustainable. The order dated February 28, 1989, passed by the Rajasthan High Court in W.P. No.871 of 1988 is set aside and the appeal is disposed of accordingly. No order as to costs."

The judgment in Kan Singh (besides Smt.Shanti Devi) which is the basis of the petitioner's claim having been set aside by the Supreme Court, it is plain that the petitioner cannot claim annual grade increment during the suspension period.

The order of the Supreme Court, it would

appear, does not set out reasons as to disentitlement of the delinquent employee to annual grade increments during the suspension period perhaps because the reason is too obvious. The entitlement to pay and allowances including annual grade increments during suspension period depends on outcome of the disciplinary proceeding, and as we shall presently see hereinafter, when we notice rule 54 of the Rajasthan Service Rules, where a delinquent employee is not fully exonerated, the rule enjoins upon the competent authority to take a decision regarding the proportion of pay and allowances to be paid to the delinquent employee and also the manner in which the period of suspension is to be treated. Indeed, depending on the outcome of the proceeding, if the employee is dismissed or removed or compulsorily retired from service by way of punishment, pay and allowance except subsistence allowance ordinarily is not paid and the occasion for grant or release of annual grade increments for the suspension period may not arise. The reason being too obvious, the Supreme Court simply set aside the judgment of this Court observing that “having regard to the rules governing the matter” the

respondent was not entitled to enhancement of subsistence allowance by taking into account the annual grade increments falling due during suspension period.

We now come to the question as to whether the petitioner is entitled to full pay and allowances only because a minor punishment was awarded to him. The claim of the petitioner in this regard is wholly misconceived and contrary to express provisions of rule 54 of the Rajasthan Service Rules. Rule 54 at this stage may be quoted as it stood at the relevant time, as under :-

> "**Re-instatement.-** (1) When a Government servant who has been dismissed, removed, compulsory retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement shall consider and make a specific order :-
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and
>
> (b) whether or not the said period shall be treated as a period spend on duty.
>
> (2) Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that

it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsory retired as a penalty or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as period on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose :

(6) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment, business profession or vocation during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement, where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment, business, profession or vocation elsewhere, nothing shall be paid to the Government servant.

Note:- The order of the competent authority regarding the treatment of the period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extra-ordinary leave in excess of three months in so far as temporary Government servant are concerned.

Provided that if the Government so

> desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

From a bare reading of the rule it is manifest that where a government servant has been fully exonerated or, in the case of suspension, it is held that suspension was wholly unjustified, under clause (2) he is entitled to full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be. In other cases, that is to say, where the government servant is not fully exonerated or there is no finding that the suspension was wholly unjustified, he is to be paid under clause (3) "such proportion of such pay and dearness allowance as such competent authority may prescribe". In other words, where there is no finding of complete exoneration or the suspension being wholly unjustified, the competent authority may decide not to pay him full pay and dearness allowance to he would have been otherwise entitled during the suspension period. No doubt, as held by the Supreme Court in M.Gopalkrishna Naidu Vs. State of M.P., AIR 1968 SC

240, and reiterated in B.D. Gupta Vs. State of Haryana, AIR 1972 SC 2472, such an order affects the employee financially and therefore, the order must be passed after an objective consideration and assessment of all the relevant facts and circumstances.

The submission of the petitioner that where minor punishment is awarded, the delinquent should be paid full pay and allowances is not borne out from the rule. The rule does not make distinction between major and minor punishments and no such classification can be made. Undoubtedly, as observed by the Supreme Court in the above-mentioned cases, the decision has to be taken on proper consideration of the attending facts and circumstances but where the delinquent employee is not fully exonerated, he cannot claim full pay and dearness allowance as a matter of right.

The petitioner, in the instant case, admittedly was awarded the punishment of censure which means that he was not exonerated of the charge and there is no dispute about it. There being also no finding that suspension was wholly unjustified, it

would follow that he cannot claim full pay and dearness allowance.

Coming to the question as to whether the attending facts and circumstances comprising the charges on which the petitioner was punished were such as to suggest that the denial of full pay and allowances during suspension period was unjustified, it appears that a number of charges had been levelled against the petitioner out of which charge nos.6 and 7 were found proved by the learned Enquiry Judge, later approved by the Full Court. As per charge no.6, during his posting as Additional District & Sessions Judge, Barmer in 1989-90, the petitioner took into judicial custody an Advocate Shri Sushil Kumar Sharma. The advocate had simply made a request to fix another date for arguments in Sessions Case no.24/1988 pointing out the absence of advocate appearing for other accused which infuriated the petitioner and he took the impugned action. On the same day, while examining a witness in Sessions Case No.28/1989 against the same advocate Shri Sushil Kumar Sharma he took cognizance under Section 228 IPC and called upon him to submit

bond for Rs.500/- to maintain peace in court within three days directing that if he does not furnish the bond within three days, he will be sentenced to seven days simple imprisonment. The order was ultimately set aside by the High Court in S.B. Criminal Misc. Petition no.210/1989 dated 30.1.1991. The Enquiry Judge inter alia found that in terms of Section 345 Cr.P.C. opportunity of show cause should have been given and finally sentence of fine not exceeding Rs.200/- could be awarded. The sentence of imprisonment could be only in default of payment of fine. But without giving any opportunity to Shri Sushil Kumar Sharma the petitioner called upon him to submit bond of Rs.500/-. The petitioner was found to have abused his authority, failed to act with complete devotion to duty and acted in a manner unbecoming as a judicial officer. As regards charge no.7 the learned Enquiry Judge found that the petitioner had dismissed three claim cases under the Motor Vehicles Act in default on account of personal animosity with concerned advocates, and thereby had abused his judicial powers.

We do not think the denial of full pay and dearness allowance during the suspension period in the facts and circumstances can be said to be arbitrary or unjustified so as to warrant any interference on judicial side. The claim of the petitioner for full pay and dearness allowance during suspension period is according rejected.

Though we have held above that the delinquent employee is not entitled to the release of annual grade increments during the suspension period, for reasons stated hereinafter, we are of the view that on his reinstatement the annual grade increments becoming due during the suspension period have to be released, and in the present case the petitioner was entitled to the release of annual grade increment on his reinstatement from suspension.

Under clause (1) of rule 54, on reinstatement of the government servant, the competent authority is required to take a specific decision (a) regarding pay and allowances paid to him for the period of his absence from duty or for the period of

suspension; and (b) whether such period is to be treated as period spent on duty. In the instant case, the period of absence on account of suspension was treated as spent on duty but only for the purpose of pension. It was submitted on behalf of the High Court that the case of the petitioner fell under clause (3) of rule 54 and it was therefore open to the authority to treat the period of absence/suspension “for any specified purpose”. It was submitted that whereas in cases falling under clause (2), that is to say, where the government servant has been fully exonerated, or suspension has been found to be wholly unjustified in the opinion of the competent authority, the period of absence “shall be treated as a period spent on duty for all purposes”, in other cases, that is to say, where the government servant has not been fully exonerated or the suspension has not been found wholly unjustified by the competent authority under clause (3) read with clause (5), the period of absence from duty “shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose”.

The point for consideration is whether expression “for any specified purpose” in clause (5) includes the release of annual grade increment. In other words, in absence of any specific direction to that effect, can the competent authority deny the annual grade increment becoming due during the suspension period after reinstatement of the government servant while exercising power under clause (1) read with clause (5) of rule 54 ?

In our opinion, entitlement to annual grade increment is governed by rule 29 of the Rajasthan Service Rules and therefore, while exercising power under rule 54(1) and (5), it is not open to the competent authority to deny increment which had fallen due during the suspension period after reinstatement of the government servant.

Rule 29 runs as under :-

> “**Increment to be drawn as a matter of course unless withheld.** Subject to the provisions of Rules 26-A, 27-A and 30, an increment shall ordinarily be drawn as a matter of course unless it is withhold by the authority empowered to withhold such increment in

> accordance with the relevant provisions of the Classification, control and Appeal Rules. Any order withholding an increment shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments."

From a plain reading it is obvious that the government servant is entitled to increment as a matter of course subject to the provisions of rules 26-A, 27-A and 30. Rule 26-A envisages a situation where a government servant holding a post in a substantive, temporary or officiating capacity is promoted to a post in the regular line of promotion in a substantive, temporary or officiating capacity. In that case, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay initially arrived at by increasing the actual pay drawn by him in the lower post by one increment at the stage on which such pay is drawn. Rule 27-A deals with pay during probation. Rule 30 deals with crossing of efficiency bar. It provides that where an efficiency bar is prescribed in any time scale, the increment next above the bar shall not be given to a government servant without specific sanction of the competent authority. Rules 26-A, 27-A and 30 thus deal with

different situations and it is only in these situations that annual grade increment due to a government servant cannot be drawn as a matter of course by him. Annual grade increment, it would thus appear, is governed by rule 29 subject to the rules referred to therein. The expression “for any specified purpose” in rule 54(5) therefore cannot be construed to include annual grade increment. Rule 54(5) can not encroach upon the field which is occupied by rule 29.

The period of absence/suspension is normally treated as period spent on duty for the purpose of pension. If the period is not treated as on duty, the result would be break in service which would cause chain of evil consequences and may spell disaster for the government servant as it would wipe out the entire past service. If the period is to be treated as a period spent on duty so that there is no break-in-service, it is un-understandable as to how the government servant can be deprived of the annual grade increments falling due during the relevant period after his reinstatement. Pension is concomitant of pay and denial of increment would mean reduced pension. Thus if the period is to be treated as period spent on

duty for the purpose of pension, it would mean that the period of suspension must be counted for the purpose of grant of annual grade increment.

Another aspect of the case is that denial of annual increment would amount to withholding of increments which is a punishment specified under rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (‘the CCA Rules’). It goes without saying that no punishment can be imposed without observing the formalities and following the procedure laid down in rules 16 and 17 of the CCA Rules, as the case may be. Withholding of increment being a minor punishment, the procedure laid down in rule 17 will have to be followed. But, if the term “for any specified purpose” is interpreted so as to include grant of increment and power is conceded to the competent authority to deny annual increment falling due during the suspension period even after reinstatement of the government servant, it would mean in effect and substance, imposing the punishment of withholding of increment without following the procedure laid down in rule 17. Obviously, this cannot

be done.

In our opinion, while construing the scope of clause (5) of rule 54, other relevant provisions can not be lost sight of. There has to be harmonious construction of all relevant and cognate provisions. So construed, it would follow that annual increment(s) cannot be withheld after the government servant is reinstated except as a measure of punishment under the CCA Rules. In the instant case, it was open to the competent authority to impose the punishment of withholding of increment(s) as a measure of punishment while accepting the enquiry report and holding the petitioner guilty of the charge nos.6 and 7 with cumulative or non-cumulative effect. This precisely was the recommendation of the Enquiry Judge. The Full Court however took the view that the punishment of censure would be sufficient. Denying the annual increment falling due during suspension period while exercising power under rule 54(5) of the Rajasthan Service Rules amounts to indirectly punishing the petitioner twice over for the same offence and that too without following the procedure laid down in the

relevant rule.

The law on the subject may be summarized in these words. The government servant is not entitled to annual increment(s) during suspension period but on his reinstatement under rule 54(1) of the Rajasthan Service Rules, he becomes entitled to the release of annual increment(s) falling due during the suspension period – whether he has been fully exonerated or not and the suspension has been held to be wholly unjustified or not – unless the punishment of withholding of increment is imposed on him in accordance with the relevant provisions of the CCA Rules.

Applying the above proposition of law in the instant case, on his reinstatement the petitioner must be held to be entitled to release of annual increment becoming due during the suspension period. The respondents are directed to issue order to this effect and accordingly refix his pay and pension and other retiral benefits in accordance with law.

In the result, the petition is allowed in part in the manner and to the extent mentioned above. There will be no order as to costs.

[AJAY RASTOGI], J. **[S.N. JHA], CJ.**

Skant/-